IRWIN RUBENSTEIN

IBLA 70-415 Decided September 21, 1971

Administrative Practice--Applications and Entries: Generally--Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Applications: Amendments--Oil and Gas Leases: Applications: Description--Oil and Gas Leases: Future and Fractional Interest Leases--Oil and Gas Leases: Noncompetitive Leases

Where the mineral interest of the United States in lands described in a noncompetitive oil and gas lease offer for acquired lands proves to be larger or smaller than the interest stated, the rentals payable by the lessee shall be increased or decreased proportionately. If the federal mineral interest is larger than the stated interest and the advance rental is deficient by more than 10 percent, the lease will not issue. However, if the deficiency is remedied by payment of the additional rental and no offers are filed in the interim, the offer earns priority from the date the deficiency is remedied.

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IBLA 70-415	:	ES-5887
IRWIN RUBENSTEIN	:	Noncompetitive oil and
	:	gas lease for acquired
	:	lands rejected
	:	Affirmed

DECISION

Irwin Rubenstein has appealed to the Director of the Bureau of Land Management from a decision of the Eastern States Land office, Bureau of Land Management, 1/ dated November 14, 1969, in which his noncompetitive oil and gas lease offer, ES-5887, for acquired lands described as the E 1/2 E 1/2 sec. 12 and E 1/2 E 1/2 sec. 13, T. 3 N., R. 2 W., Choctaw Meridian, Mississippi, was denied. Rubenstein's offer was rejected in its entirety since all the lands were included in a prior lease, ES-5755, issued to Sun Oil Company.

The appellant contends that the Sun Oil Company lease was issued erroneously and that he is the first qualified applicant. The Sun Oil lease application was filed on April 23, 1969. Its application stated that the United States owned 75 percent of the mineral interest and that it owned none of the operating rights to the fractional mineral interest not owned by the United States. This offer was rejected on June 27, 1969, because it was determined that the United States owned 100 percent of the mineral interest in the subject land, and that the remittance of the advance rental was therefore deficient. It was noted in the decision that the rejection would be final unless appealed in accordance with the appropriate regulations.

1/ The Secretary of the Interior, in the exercise of his supervisory authority, transferred jurisdiction over all appeals pending before the Director, Bureau of Land Management, to the Board of Land Appeals, effective July 1, 1970. Circular 2273, 35 F.R. 10009, 10012.

On June 30, 1969, the attorney for Sun Oil Company tendered a check for the requisite additional rental accompanied by a handwritten note on a piece of yellow legal paper. The note read: "In compliance with your decision . . . I tender herewith [a] check . . . as additional rental. I request that this case now be adjudicated in accordance with this additional payment." The Eastern States land office issued the lease to Sun Oil Company on July 16, 1969, effective August 1, 1969, despite the filing of the Rubenstein offer on July 7, 1969.

Rubenstein's offer, in contrast to the Sun Oil offer, noted that the United States owned the entire mineral interest in the acquired lands and included the requisite advance rental. However, the Eastern States land office had given priority to the Sun Oil lease on the basis of its tendered June 30 additional rental and request for adjudication in conformity with the additional payment. It is the contention of the appellant that the act of the land office in issuing the lease to Sun Oil under the described circumstances was without authority.

The appellant cites cases detailing the responsibility of an applicant to complete his application properly and limiting the authority of the manager to correct improper land descriptions. He contends that the tender of the additional rental and the request that the offer be adjudicated in conformity therewith resulted in the manager acting, in effect, as agent for Sun Oil. Since Sun Oil never declared affirmatively in its offer to lease that the United States owned 100 percent of the mineral interest, or that its offer contemplated the entire interest, appellant argues that the land office was without authority to issue a lease for the 100 percent interest. Accordingly, he asserts that his application constituted the first qualified offer, and requests that Sun Oil's lease be canceled and a lease be issued to him. 2/

Item 3 in the special instructions of the lease form states, "If the interest of the United States in the oil and gas proves to be larger or smaller than the interest stated, the rentals and royalties payable by the lessee shall be increased or decreased proportionately." This language explains how a discrepancy in the stated amount in the federal mineral interest is adjusted. From this it is clear that a failure to state accurately

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2/ It is noted that Sun Oil's lease terminated on August 3, 1970, for failure to pay the annual rental when due. Therefore, the cancellation issue is moot and will not be discussed in this decision.

the percentile of the federally owned mineral interest is not necessarily fatal to the offer, but is remediable by adjusting the rental and royalty amounts.

In Duncan Miller, A-29425 (July 23, 1963), the offeror submitted his offer for a noncompetitive oil and gas lease, stating on the offer form that the United States owned 50 percent mineral interest, and he tendered a rental appropriate to such an interest. His offer was rejected by the land office on the ground that since he did not own any of the outstanding 50 percent it would not be in the public interest to lease to him. On appeal it appeared that the United States owned the entire interest, but no additional rental had been tendered to cover the additional federal interest. The Department held:

> If he is asking that his offer be considered as one for 100% of the minerals, it would still have to be rejected. He submitted an advance payment for the first year's rental in the amount of $10.00, the proper rental for 40 acres in which the United States has a 50 percent mineral interest. If the United States owns 100% of the mineral interest, the required rental is $20.00. Thus, Miller's offer would be deficient in the first years rental by more than 10 percent and it would have to be rejected and would afford him no priority. (Citations omitted.)

Had the appellant in the Miller case, supra, tendered the requisite additional rental--as Sun Oil did in the case at hand--the stated reason for the rejection of Miller's offer of the entire mineral interest would have been negated. In short, the sufficiency or insufficiency of the advance rental payment constituted the determinate factor.

Sun Oil's failure to formally amend its offer so as to accurately express the federal mineral interest was not fatal because the offer, by its terms, is a commitment by the offeror to lease "any or all" of the lands described in item 2 of the offer form. This includes the total extent of the federal interest in such lands, as no authority exists for the leasing of any lesser interest. Duncan Miller, supra. Under the "any or all" concept, for example, where an offeror indicates in item 2 of the offer form that the federal interest is 75 percent, but the land status records show that the United States owns only 70 percent, the lease would issue for 70 percent (all else being regular) and the surplus rental, if any, would be refunded.

Similarly, if instead of the 75 percent federal interest indicated by the offeror, the United States owned 80 percent the lease would issue for 80 percent without amendment of the offer, provided that the rental tendered was not deficient by more than 10 percent. 3/

Sun Oil's offer was properly rejected for insufficient rental and did not earn priority from the date of filing. The date of priority was fixed when the deficiency of the offer was remedied by payment of the additional amount. Had Rubenstein's offer been filed in the interim, he would have been the first qualified applicant. Raymond J. Hansen, A-30179 (March 5, 1965). But such was not the case.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the Eastern States land office is affirmed.

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Edward W. Stuebing, Member

We concur:

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Martin Ritvo, Member

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Newton Frishberg, Chairman

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3/ 43 CFR 3311.1-1(e) provides that an offer deficient in the first year's rental by not more than 10 percent will be approved conditionally upon payment of the additional amount within 30 days.